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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 FEB 26 P 12:46

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 26 2009

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-08-0049

**MOTION TO QUASH
DEPOSITIONS**

1 Swing First Golf LLC ("Swing First") hereby moves to quash two depositions noticed by
2 Johnson Utilities LLC ("Utility").

3 Utility has filed two notices of depositions with the Commission: one for David Ashton
4 on March 3, 2009, in Phoenix, Arizona, and the other for Michael White on March 13, 2009, in
5 Salt Lake City Utah. Utility's filings are clearly in bad faith.

6 Utility inquired about an early deposition date for Mr. Ashton and Swing First replied
7 that this was impossible for a number of reasons. A copy of counsel's February 9, 2009, letter to
8 Mr. Crockett is attached as Exhibit A. The letter stated:

9 I am responding to your February 4, 2009, request to depose Mr. Ashton within
10 the next month. As I explained to you on the phone, this is not possible. Mr.
11 Ashton resides and works in Europe. Other than his travel here to testify in the
12 Johnson Utilities Rate Case, he will not be in the United States until June.

13 Further, preparing for and representing Mr. Ashton at a deposition would be very
14 burdensome for me, a sole practitioner, over the next three months. Along with
15 my normal workload, I will be participating in three rate cases during that time
16 period, including representing Arizona-American in its seven-district rate case,
17 which will go to hearing next month.

18 It is difficult for me to understand your sudden zeal to conduct discovery in this
19 case, given you and your client's incredible delays (up to six months) in replying
20 to data requests, your bad-faith responses, and you having twice forcing me to file
21 motions to compel.

1 Finally, I do not see the need for you to depose Mr. Ashton at this time, if at all.
2 As you know, depositions are rarely part of discovery practice at the Commission.
3 If you still feel that you need to take a deposition after Mr. Ashton has actually
4 filed testimony in this case, and you have conducted whatever additional
5 discovery you believe is warranted, then we could revisit this issue.

6 Mr. Ashton's deposition is scheduled for March 3, 2009, the same date as Open Meeting.
7 As discussed above, Mr. Ashton lives and works in Europe and is unavailable that date, or in the
8 next several months.

9 Utility made no inquiry at all to Swing First about Mr. White's deposition. Utility simply
10 scheduled the deposition, in Salt Lake City, without any attempt to accommodate Swing First's
11 counsel. On the scheduled date, Swing First's counsel will be participating in a prehearing
12 conference at the Commission in the Arizona-American rate case, Docket Nos. W-01303A-08-
13 0227; SW-01303A-08-0227. The hearings begin the following week and are likely to continue
14 for at least another week.

15 Utility simply ignored four very valid reasons why depositions cannot be taken at this
16 time:

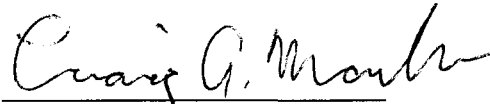
- 17 1. Mr. Ashton works and lives in Europe, so he is unavailable;
- 18 2. Preparing for and participating in depositions at this time would be unduly
19 burdensome for Swing First's counsel;
- 20 3. Utility has unduly delayed discovery in this case and has shown no need for an
21 immediate deposition; and
- 22 4. Depositions are rarely used at the Commission.

23 Utility makes no excuses for its bad faith and provides no reason why it suddenly needs
24 depositions.

25 **REQUESTED RELIEF**

26 Swing First asks the Commission to quash the noticed subpoenas.
27

1 RESPECTFULLY SUBMITTED on February 26, 2009.
2
3

4 
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6 Craig A. Marks
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9 Suite 200-676
10 Phoenix, AZ 85028
11 Craig.Marks@azbar.org
12 Attorney for Swing First Golf LLC
13

14 **Original and 13 copies filed**
15 on February 26, 2009, to:

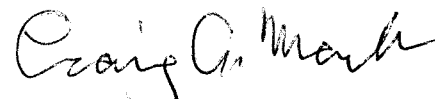
16
17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007
21

22 **Copy of the foregoing delivered**
23 on February 26, 2009, to:

24
25 Robin Mitchell
26 Legal Division
27 Arizona Corporation Commission
28 1200 West Washington Street
29 Phoenix, AZ 85007
30

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February 9, 2009

Jeffrey W. Crockett, Esq.
Snell & Wilmer LLP
One Arizona Center
Phoenix, Arizona 85004

Re: Swing First Golf v. Johnson Utilities, LLC
Docket WS-02987A-08-0049 (Complaint Proceeding)

Dear Jeff:

I am responding to your February 4, 2009, request to depose Mr. Ashton within the next month. As I explained to you on the phone, this is not possible. Mr. Ashton resides and works in Europe. Other than his travel here to testify in the Johnson Utilities Rate Case, he will not be in the United States until June.

Further, preparing for and representing Mr. Ashton at a deposition would be very burdensome for me, a sole practitioner, over the next three months. Along with my normal workload, I will be participating in three rate cases during that time period, including representing Arizona-American in its seven-district rate case, which will go to hearing next month.

It is difficult for me to understand your sudden zeal to conduct discovery in this case, given you and your client's incredible delays (up to six months) in replying to data requests, your bad-faith responses, and you having twice forcing me to file motions to compel.

Finally, I do not see the need for you to depose Mr. Ashton at this time, if at all. As you know, depositions are rarely part of discovery practice at the Commission. If you still feel that you need to take a deposition after Mr. Ashton has actually filed testimony in this case, and you have conducted whatever additional discovery you believe is warranted, then we could revisit this issue.

Very truly yours,

/s/ Craig A. Marks

Cc: Robin Mitchell